

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**CEDRIC MOSELY and J. RAFAEL COSIO**, on behalf of themselves and all others similarly situated,

Case No. 13-CV-2470 (RJD)(RLM)

Plaintiffs,

v.

**VITALIZE LABS, LLC**,

Defendant.

**NOTICE OF SERVICE**

PLEASE TAKE NOTICE of service of Third Party Subpoena Duces Tecum on Caremark, LLC / CVS Caremark Corporation, a copy of which is attached as Exhibit A.

DATED: New York, New York  
July 1, 2014

**JENKINS & LOPRESTI, LLP**

/s/ Anthony A. LoPresti  
Anthony A. LoPresti  
alopresti@jlfirm.com

30 Broad Street, 37th Floor  
New York, New York 10004  
Telephone: (212) 757-5277  
Facsimile: (212) 202-4410

*Counsel for Defendant Vitalize Labs, LLC*

**EXHIBIT A**

**EXHIBIT A**

**UNITED STATES DISTRICT COURT**  
 for the  
**EASTERN DISTRICT OF NEW YORK**

CEDRIC MOSELY and J. RAFAEL COSIO

|   |  |
|---|--|
| <u>Plaintiff</u><br><br><u>v.</u>                 | <u>)</u><br><u>)</u><br><u>)</u><br><u>)</u><br><u>)</u> |
| <u>VITALIZE LABS, LLC</u><br><br><u>Defendant</u> |  |

Civil Action No. 13-cv-02470-RJD-RLM

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
 OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Caremark, LLC / CVS Caremark Corporation - c/o CT Corporation System  
 111 Eighth Avenue, 13<sup>th</sup> Floor, New York, NY 10011 (212) 894-8912

*(Name of person to whom this subpoena is directed)*

**☒ Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See attached Exhibit "A"

|   |  |
|---|--|
| Place: c/o Jenkins & LoPresti, LLP<br>30 Broad Street, 37 <sup>th</sup> Floor<br>New York, New York 10004 | Date and Time:<br>07/09/2014 at 10:00 a.m. |
|---|--|

**☒ Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

|        |                |
|--------|----------------|
| Place: | Date and Time: |
|--------|----------------|

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/01/2014

*CLERK OF COURT*

OR

/Anthony A. LoPresti

*Attorney's signature*

*Signature of Clerk or Deputy Clerk*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) Vitalize Labs, LLC, who issues or requests this subpoena, are:

Anthony A. LoPresti - 30 Broad Street, 37<sup>th</sup> Fl., New York, N.Y. 10004 - (212) 757-5277 - email: [alopresti@jlfir.com](mailto:alopresti@jlfir.com)

**Notice to the person who issues or requests this subpoena**

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**EXHIBIT A**

**SUBPOENA DUCES TECUM FOR INFORMATION AND RECORDS**

Documents requested below may be produced in standard electronic portable document format (.pdf) or other format agreed upon instead of paper copies.

**DEFINITIONS AND INSTRUCTIONS**

1. "Plaintiff" means J. Rafael Cosio.
2. "Defendant" means Vitalize Labs, LLC d/b/a EBOOST.
3. "EBOOST" means the brand name of, and the product sold by Defendant, which can be found at [www.eboost.com](http://www.eboost.com).
4. "CVS" means CVS Caremark Corporation, Caremark LLC, or any affiliate of either, and all nationwide retail stores operated by CVS.
5. "Communications" is used here in the broadest sense consistent with the Federal Rules of Civil Procedure and includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, together with all letters, memoranda, telegrams, email, facsimile, cables, and other writings or documents regardless of their form or method of delivery and storage.
6. "Documents" is used in the broadest sense and includes, without limitation: all forms of communication including emails, computer printouts, records, reports, invoices, receipts, sales records, electronic or computerized databases or compilations, entries, reported recollections and any other form of notation of events or intentions, ledgers, memoranda, notes, calculations, worksheets, written agreements, displays, advertisements, packaging and marketing materials.
7. "Identify" when used with reference to a document means to state: (a) the type of document; (b) the date of the document; (c) the name and relationship to defendant of the author(s) of the document; (d) the name and relationship to defendant of the addressee(s) and/or recipient(s) of the document; (e) the signer(s) of the document, if different than the author(s); and (f) the length of the document.

**UNAVAILABILITY OF DOCUMENTS**

8. If any documents requested were at one time in existence or have been lost, discarded or destroyed, state for each document: (i) the type of documents; (ii) the date upon which it ceased to exist or was lost; (iii) the circumstances under which it ceased to exist or was lost; (iv) the identity of all persons having knowledge or the

circumstances under which it ceased to exist or was lost; (v) the identity of all persons having knowledge of the circumstances under which it ceased to exist or was lost; and (vi) the identity of all persons having knowledge of the contents of such documents.

**DOCUMENT AND IDENTIFICATION REQUESTS**

1. Please produce all Documents that pertain to the sale of EBOOST at CVS stores.
2. Please produce all Documents that pertain to the sale of EBOOST at CVS stores in California.
3. Please produce all Documents that pertain to the sale of EBOOST at CVS stores in West Hollywood, California.
4. Please produce all Documents that pertain to the advertising, marketing and packaging of EBOOST at CVS stores during the period November 1, 2010 through November 1, 2013.
5. Please Identify any written agreements, invoices or statements that pertain to the sale of EBOOST by CVS.